



October 25, 2001

Dr. Ramon Dominguez, Ph.D
President
El Paso Community College
P.O. Box 20500
El Paso, Texas 79998-0500

OR2001-4868

Dear Dr. Dominguez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 153904.

El Paso Community College (the "college") received a request for three categories of information pertaining to investigations conducted by a firm named Vigilance Professional Investigative Services, Inc. You have sent three billing statements for our review, and claim that highlighted information within two of these billing statements is excepted from disclosure under sections 552.103, 552.107 and 552.108 of the Government Code. You state that the third billing statement, pertaining to case EPCC 2001-02, will be released to the requestor. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that the submitted fee bills are expressly made public by section 552.022 of the Government Code. Section 552.022 provides, in relevant part:

(a) Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

....

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

The submitted billing statements and highlighted portions thereof are subject to section 552.022(a)(3). You claim exception from public disclosure for portions of the billing statement for case EPCC 2001-01 under sections 552.103 and 552.107, and for portions of the billing statement for case EPCC 2001-03 under section 552.108. Sections 552.103, 552.107, and 552.108 are discretionary exceptions which do not constitute other law that makes information subject to section 552.022(a)(3) confidential. Therefore, the submitted billing information for EPCC 2001-03 must be released to the requestors in its entirety. The highlighted information in Case EPCC 2001-01 may similarly not be withheld under section 552.103 or 552.107.

The attorney-client privilege, however, is also found in rule 503 of the Texas Rules of Evidence. The Texas Supreme Court recently held that "[t]he Texas Rules of Civil Procedure and Texas Rules of Evidence are 'other law' within the meaning of section 552.022." See *In re City of Georgetown*, No. 00-0453, 2001 WL 123933, at *8 (Tex. Feb. 15, 2001). Therefore, we will consider whether the highlighted information in case EPCC 2001-01 is confidential under rule 503.

Rule 503(b)(1) provides as follows:

A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client:

- (A) between the client or a representative of the client and the client's lawyer or a representative of the lawyer;
- (B) between the lawyer and the lawyer's representative;
- (C) by the client or a representative of the client, or the client's lawyer or a representative of the lawyer, to a lawyer or a representative of a lawyer representing another party in a pending action and concerning a matter of common interest therein;
- (D) between representatives of the client or between the client and a representative of the client; or
- (E) among lawyers and their representatives representing the same client.

TEX. R. EVID. 503. A communication is "confidential" if not intended to be disclosed to third persons other than those to whom disclosure is made in furtherance of the rendition of professional legal services to the client or those reasonably necessary for the transmission of the communication. *Id.* 503(a)(5).

Thus, in order to withhold attorney-client privileged information from disclosure under rule 503, a governmental body must: (1) show that the document is a communication transmitted between privileged parties or reveals a confidential communication; (2) identify the parties involved in the communication; and (3) show that the communication is confidential by explaining that it was not intended to be disclosed to third persons and that it was made in furtherance of the rendition of professional legal services to the client. Upon a demonstration of all three factors, the document containing privileged information is confidential under rule 503 provided the client has not waived the privilege or the document does not fall within the purview of the exceptions to the privilege enumerated in rule 503(d). *Pittsburgh Corning Corp. v. Caldwell*, 861 S.W.2d 423, 427 (Tex. App.-Houston [14th Dist.] 1993, no writ).

Upon review of your arguments and the highlighted information in the bill for case EPCC 2001-01, we conclude that you have not demonstrated, nor do the documents reveal, how this information is protected by the attorney-client privilege under Texas Rule of Evidence 503. Therefore, we conclude that you may not withhold the highlighted information in the bill for case EPCC 2001-01 under Texas Rule of Evidence 503, and therefore, it must be released to the requestor.

To summarize, the information in the submitted fee bills is expressly made public under section 552.022(a)(3) of the Government Code. This highlighted information in the bill for case EPCC 2001-01 may not be withheld under sections 552.103 or 552.107(1), nor under Texas Rule of Evidence 503, and therefore, this bill must be released to the requestor in its entirety. The highlighted information in the bill for case EPCC 2001-03 may not be withheld under section 552.108, and thus this bill must also be released to the requestor in its entirety.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 153904

Enc. Submitted documents

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